

REMARKS

The Examiner has explained that in receipt of response restriction requirement and amendment dated January 2, 2008 and Information Disclosure Statement August 19, 2004 and August 15, 2004 is acknowledged the Examiner has withdrawn the restriction requirement of the previous action and all of claims 1-25 are pending in the application. Currently claims 1 and 2 are cancelled and claims 4-7 and 10 are currently amended.

35 U.S.C. §102 (b) Rejection

The Examiner has rejected claims 1-2, 4-7 and 10 under 35 U.S.C. §102(b) as being anticipated by US 5,112,688 to Michael (herein referred to as Michael).

In the interest of advancing prosecution Applicants have cancelled claims 1 and 2 and have amended claims 4-7 and 10 to depend on claim 3.

In view of these amendments the rejection under 35 U.S.C. §102(b) is moot and Applicants respectfully request withdrawal of the rejections.

35 U.S.C. §103 (a) Rejection

The Examiner has also rejected claims 3, 7-9 and 11-25 under 35 U.S.C. §103(a) as being unpatentable over Michael in view of U.S. 6,024, 943 to Ness (herein referred to as Ness) and U.S. Publication No. 2004/0005285 to Midha (herein referred to as Midha) or Michael in view of Midha.

The Examiner has also rejected claims 1-13 and 17-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. 6,024, 943 to Ness in view of U.S. 5,112,688 to Michael or Midha.

The Examiner states that Michael fails to disclose the claimed polymer of the claimed invention that makes up the wall of the microcapsule, the cationically charged polymer of claim 9 and the intensity of fragrance of claim 18 and application of the microcapsules to hair.

To cure these deficiencies the Examiner cites Ness, however, nowhere does Ness et al. provide any teaching, suggestion or motivation of a wash off product comprising a liquid fragrance material encapsulated by a polymer to provide a polymer encapsulated fragrance wherein the encapsulated fragrance is further coated by a cationic polymer and additional comprising a silicone material.

In contrast to the present invention, Ness et al. clearly discloses at col. 3 lines 47-49, “this invention uses polymer particles which are solid-although they may be porous as well as solid-rather than particles in the form of hollow capsules”. Ness et al. teach that solid particles are

advantageous over hollow capsules and the polymerization reaction can be carried out in the absence of the liquid.

Obviousness of a composition or process must be predicated on something more than it would be obvious to try the particular component recited in the claims or the possibility it will be considered in the future, having been neglected in the past. *Ex parte Argabright et al.* (POBA 1967) 161 U.S.P.Q. 703. Furthermore, although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.). See also *In re Fritch*, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). There is no teaching, motivation or suggestion in Ness et al. to modify the solid particles disclosed therein and arrive at the claimed invention.

Moreover, Ness et al. teaches away from the claimed invention by teaching solid particles are superior to hollow capsules. There is no teaching, suggestion or motivation in Ness et al. that replacing the solid particle materials with the capsule materials presently claimed in the invention would have the same result without the use of **undue experimentation**.

The Examiner further cites Midha for the disclosure hair care particles that contain suspending agents and thickening agents. None of the references teach or suggest a technique for highly substantive deposition of effectively-rupturable malodour suppressant and/or fragrance emitting microcapsules onto specific regions of the human epidermis or onto groups of human hair follicles wherein the resulting emitted fragrance activity and/or malodour counteractant activity is continuously intense and long-lasting and where the resulting substantive aroma is aesthetically pleasing over the long period of time during which it is effective as the claimed invention.

Thus, one skilled in the art would not be motivated to modify the capsules of Michael with the solid particles of Ness et al. or Midha to arrive at the presently claimed invention with any expectation of success. Therefore, in view of the amendment to Claim 1-13 and 17-25, are not obvious under 35 U.S.C. § 103(a) over Michael, Ness and Midha and are therefore patentable.

Double Patenting Rejection

The Examiner has rejected claims 1-25 on the ground of a nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 7,119,057 or claims 1-17 of U.S. Patent No. 7,122,512, claims 1-11 of U.S. Patent No. 7,125,835 and claims 1-6 of U.S. Patent No. 7,294,612 each in view of Michael and Midha or Ness to Midha.

In response to the above-mentioned rejections, the Applicants submit a Terminal Disclaimer forms disclaiming a terminal part of the statutory term of a patent granted on the above-identified application, which would extend beyond the expiration date of the full statutory terms of U.S.

Patent Nos. 7,119,057; 7,122,512; 7,125,835; 7,294,612. The Applicants also submit a Statement Under 37 C.F.R 3.37(b) indicating the ownership of the above-identified application.

Applicants respectfully request withdrawal of the rejection.

35 U.S.C. §103 (a) Rejection

Claims 1-25 stand rejected under 35 U.S.C. §103(a) as being obvious over each of the U.S. Patent 7,119,057; 7,112,512; 7,125,835 and 7,294,612 and U.S. Application 10/460,610 in view of Midha.

The Examiner states that each of the applied reference has a common inventor with the instant application and the Applicant may overcome the rejection under 35 U.S.C. §103(a) by showing under 37 CFR §1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR §1.321(c).

In support of the allowability of the claims presented herein, the Applicants hereby submit that the instant patent application and U.S. Patent 7,119,057; 7,112,512; 7,125,835 and 7,294,612 and U.S. Application 10/460,610 were, at the time the invention of the instant application was made, commonly owned by International Flavors & Fragrances Inc. A Declaration under 37 C.F.R. § 1.130 and Executed Terminal Disclaimer and Statement Under § 3.73(b) forms are enclosed herewith. Therefore, the Applicants respectfully submit that the rejection of claims 1-12 under 35 U.S.C. § 103(a) over U.S. Patent 7,119,057; 7,112,512; 7,125,835 and 7,294,612 and U.S. Application 10/416,610 is improper and the Applicants respectfully request this rejection be withdrawn.

Conclusion

In view of the foregoing, Applicants respectfully request reconsideration, withdrawal of rejections, and allowance of all claims is earnestly solicited.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to the Deposit Account No. 12-1295.

Respectfully submitted,

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